

Decision 01-06-084 June 28, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application for Authority for Country Road Communications, Inc. and Evans Telephone Holdings, Inc., to Acquire and Control Evans Telephone Company.

Application 00-09-045  
(Filed September 19, 2000)

**O P I N I O N**

**1. Summary**

Country Road Communications, Inc. (Country Road), its subsidiary Evans Telephone Holdings, Inc. (Evans Holdings), Evans Telephone Company (Evans Telephone) and J. H. Evans, Inc. (jointly “Applicants”) seek approval under Section 854(a) of the Public Utilities Code<sup>1</sup> for the acquisition of Evans Telephone by Evans Holdings and Country Road. The application also seeks approval for Evans Holdings to exercise direct control and Country Road to exercise indirect control over Evans Telephone through transfer of the stock of Evans Telephone to Evans Holdings. The application is unopposed. The application is approved subject to conditions which insulate Evans Telephone ratepayers from the debt repayment obligations of Country Road and Evans Holdings, and require Evans Telephone to maintain service that is safe, reliable, and in compliance with applicable statutes and Commission orders. In addition, Applicants are required to invest approximately \$11 million in network infrastructure for Evans Telephone over the next five years and increase the offering of broadband and other services to Evans Telephone customers without increasing local rates.

---

<sup>1</sup> All further statutory references are to the Public Utilities Code unless otherwise noted.

## **2. Description of Applicants**

Evans Telephone is an incumbent local exchange telephone utility based in Turlock, California, that provides local exchange telephone service in portions of Merced, Stanislaus, Santa Clara, and Yolo Counties, serving approximately 12,000 access lines. J. H. Evans, Inc. owns all of the issued and outstanding stock of Evans Telephone and also owns interests in Evans Communications, a California corporation which provides installation, service, and maintenance of business telephone systems and Internet access. Applicants state that Evans Communications is not subject to Commission regulation.

Country Road and Evans Holdings are Delaware corporations based in Morristown, New Jersey. Country Road owns and operates two local exchange telephone companies, located in Maine and West Virginia, with approximately 8,500 access lines. Evans Holdings is a subsidiary of Country Road that has not yet been capitalized or engaged in business operations. Applicants state that these events will occur in connection with the closing of its acquisition of Evans Telephone. CRC Communications of California (CRC) is a subsidiary of Country Road authorized to operate in California as a competitive local carrier (CLC).<sup>2</sup>

## **3. Nature of Application**

Applicants present a Stock Purchase Agreement wherein Evans Holdings will acquire all of the stock of Evans Telephone and its unregulated affiliate Evans Communications. The purchase price of the stock of both Evans Telephone and Evans Communications is \$70 million.

Evans Telephone has been owned by members of the Evans family since its incorporation in 1951. Prior to incorporation, the business was conducted by the family

---

<sup>2</sup> CRC was granted operating authority in Decision (D.) 01-02-034 issued February 8, 2001, and may provide service within the service territories of Pacific Bell Telephone Company, Verizon California, Inc., and Citizens Telecommunications Company of California.

beginning in 1913. Applicants state that the Evans family members now desire to conclude their long-standing ownership of Evans Telephone.

Applicants contend that the acquisition involves only the transfer of stock and there will be no effect on the assets, liabilities, operations, financial statements, or regulatory status of Evans Telephone. According to the application, Country Road intends to retain the current management personnel and structure of Evans Telephone and will continue to conduct its operations from Turlock, California. Furthermore, Applicants state their intention to continue to provide high quality telecommunications services to the customers of Evans Telephone.

The application contains a copy of the stock purchase agreement between J. H. Evans, Inc. and Evans Holdings as well as copies of financial statements for Evans Telephone and Country Road.

Applicants state that Country Road possesses the technical expertise and business experience required for the acquisition and control of Evans Telephone. Exhibit D of the application indicates that Country Road's chairman and Chief Executive Office, Harry S. Bennett, has 27 years of experience in telecommunications with AT&T, including five years as an Executive Vice President of the nationwide Local Services Division and 16 years as a Vice President in several areas of AT&T operations. Jane N. Medlin, Country Road's President and Chief Operating Officer, has 30 years of telecommunications management experience with AT&T and Bell Atlantic. Thomas Mendenhall, Vice President of Finance for Country Road, has 25 years of financial and general management experience with large and small manufacturing and distribution companies. Wayne F. Henderson, Vice President of Business Development for Country Road, has 30 years of telecommunications and other experience with AT&T, Illinois Bell, and Capital Dynamics International.

There were no responses or protests to the application.

#### **4. Amendments to the Application**

The assigned administrative law judge (ALJ) issued two rulings requesting further information regarding the proposed acquisition of Evans Telephone. In both rulings, the ALJ noted that the proposed stock acquisition involves a small local exchange carrier serving both small and rural communities in California where competitive options for local exchange service may not yet have developed. The rulings explained that the Commission should consider whether the proposed transaction has the potential to cause any harm to current ratepayers of Evans Telephone. In the first ruling, Applicants were directed to provide information on whether the proposed acquisition maintained or improved several aspects of Evans Telephone. The second ruling requested additional financial information from the applicants.

On December 5, 2000, Applicants filed an amendment to the application generally asserting that the proposed transaction would not have any negative impacts on any aspects of Evans Telephone identified in the ALJ ruling. Specifically, the amendment included the following assertions:

- The acquisition involves only the sale of stock of Evans Telephone and there will be no impact on the income, expense, assets, liabilities, or operations of Evans Telephone. The financial statements of Evans Telephone will be unaffected, as will its regulatory financial reporting and other requirements.
- The tariffs, customer prices, and service policies of Evans Telephone will not be affected by the change in shareholder identity.
- Country Road intends to build on the existing business relationships of Evans Communications to expand into other competitive telecommunications service offerings in the areas where Evans Communications does business. Applicants view this business opportunity as an important component of the total acquisition package.

- Country Road intends to finance the stock acquisition with a combination of \$38 million in equity and \$42 million in debt.
- The sale of stock of Evans Telephone will have no impact positive or negative on the quality of service to Evans Telephone customers.
- Country Road intends to retain the existing management of Evans Telephone.
- The stock acquisition will not change the status of any employees because Country Road plans to retain current management, clerical, and craft employees under current employment conditions and policies.
- All shareholders of J. H. Evans, the holding company that owns Evans Telephone, have consented to the stock acquisition.
- The stock acquisition will not reduce Evans Telephone's presence in the local economy and communities because service quality and infrastructure will be maintained.
- Country Road plans to serve nearby local communities as a competitive local exchange carrier (CLC) which applicants allege will enhance competition and expand available services to the communities and the regional economy.

In a second amendment filed on December 27, 2000, Applicants provided additional financial information requested by the ALJ including a corrected copy of the Country Road balance sheet and a copy of a bank loan commitment from CoBank, ACB ("CoBank") regarding \$42 million in loans to finance the proposed stock acquisition.

## **5. Initial Proposed Decision**

On March 9, 2001, the ALJ mailed a draft decision in this matter that denied the application because it found that the acquisition and subsequent transfer of control of Evans Telephone to Evans Holdings and Country Road would be adverse to the public interest. The draft order noted the Commission's concern with Country Road's negative

net income, its high proportion of long-term debt relative to equity, and its high percentage of intangible assets.<sup>3</sup> Given the additional \$42 million in long-term debt needed to finance the proposed transaction, the order found that the financial condition of Country Road could pose a threat to the captive ratepayers of Evans Telephone because the company might be forced to sell assets or seek a rate increase to pay debt obligations from the acquisition. Hence, the draft order found that the proposed transaction would be adverse to the public interest because Evans Telephone's financial condition would not be maintained or improved by the transaction. In denying the application, the draft decision noted that the denial was without prejudice to any future filing by Applicants attempting to show that the ratepayers of Evans Telephone would not be affected in the event of financial difficulties for Country Road.

On March 27, 2001, Applicants filed a petition asking the Commission to set aside submission of this proceeding and receive additional evidence demonstrating that the public interest would be served if Country Road assumed control of Evans Telephone. In a ruling shortly thereafter, the assigned ALJ allowed Applicants to supplement the record of this case, rather than filing an entirely new application, in an attempt to meet their burden of proof that the proposed transaction is in the public interest. The ruling required Applicants to respond to a series of questions on the financing of the transaction and the effect of the transaction on Evans Telephone's finances and ratepayers. The initial draft decision denying the application was withdrawn from the Commission's agenda.

## **6. Third Amendment to the Application**

On April 24, 2001, Applicants filed a third amendment containing declarations in support of the application by Jane Evans Vilas, a shareholder and director of J. H. Evans,

---

<sup>3</sup> Country Road's balance sheet, dated June 30, 2000, indicates total assets of \$39.7 million (of which \$30.3 million are listed as "Intangibles"), long-term debt of \$22.5 million, and equity of \$14.7 million. (See Second Amendment to A.00-09-045, filed December 27, 2000) Country Road's income statement for the same period shows a net loss of \$3.3 million.

Inc., and by Jane Medlin, an officer of Country Road. In response to the ALJ's questions, Applicants filed declarations on May 10, 2001 by Thomas Mendenhall, Country Road's Vice President of Finance and by Christopher Motl, Vice President of the Communications Division of CoBank.

Mendenhall's declaration provides the following information:

- After the proposed acquisition, Country Road, Evans Holdings, and Evans Telephone will be separate corporations.
- Evans Holdings will enter into a loan transaction with CoBank for \$42 million to finance the acquisition. Evans Telephone is not responsible for this loan.
- Because of the separate legal structures of Country Road and its subsidiaries, Evans Telephone will not incur any liability for the debt incurred to finance the transaction and Evans Telephone ratepayers are insulated from any debt obligation from the transaction.
- Evans Holdings projects it will have adequate cash flow for the next five years to service its debt obligation and to re-invest earnings back into Evans Telephone. The cash flow projections are based on the assumption that there will be no increase in rates to Evans Telephone customers.
- Country Road commits to invest \$11 million in network infrastructure for Evans Telephone over the next five years. This investment will be funded from cash flow generated by Evans Telephone and Evans Communications and not through any additional debt.
- The success or failure of Country Road's CLC operation, CRC, will have no impact on Evans Telephone. The CLC operation is completely separate from the Evans companies and will be financed independently of Evans Holdings. Country Road does not rely on revenue from its CLC operation to support debt service obligations for the acquisition of Evans Telephone.<sup>4</sup>

---

<sup>4</sup> Pursuant to D.01-02-034, CRC operates outside the territory of Evans Telephone.

- Evans Telephone must report all significant transactions with unregulated affiliates according to Section 587 and the affiliate reporting rules set forth in D.93-02-019.<sup>5</sup>
- If the Commission requires sharing with ratepayers as described in Section 854(b), Country Road will provide a surcredit to ratepayers in the amount of \$700,000 over five years, funded out of earnings from the operations of the Evans Companies.
- The Commission could condition its approval of the proposed transaction by prohibiting Evans Telephone from selling any assets used or useful in the provision of its regulated services or raising its rates to satisfy debt obligations incurred by Country Road or Evans Holdings to finance the acquisition of the Evans Companies.

The declaration of Motl provides background regarding CoBank and the due diligence it performed in support of its decision to issue a loan to Evans Holdings for the acquisition of Evans Telephone and Evans Communications. According to the declaration, Evans Holdings and its parent, Country Road, satisfy CoBank's credit analysis and other requirements by complying with all three financial ratio tests that CoBank employs when evaluating a potential loan. Further, Motl states that based on his experience and CoBank's extensive loan portfolio with rural telephone companies, the debt to equity ratio of 60/40 in this transaction is not uncommon for acquisitions of rural telephone companies. He also states that based on the due diligence analysis he performed, the projected revenues and cash flow of Evans Holdings will support the debt service required for the transaction.

In response to questions regarding how the Commission should handle any "gain on sale" from this stock transaction, Applicants provided a brief stating that applicable Commission precedents regarding gain on sale, particularly D.89-07-016, are not applicable to this transaction. Applicants distinguish this transaction as involving the

---

<sup>5</sup> 48 CPUC2d 163, 171.

transfer of stock of a utility under Section 854 rather than the sale of utility operating assets under Section 851 and claim that Commission precedents regarding gain on sale relate solely to gains from the latter.

## **7. Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.) The Commission has held that the relevant inquiry is whether the proposed transaction is in the public interest.

Applicants present the argument that the proposed acquisition of Evans Telephone and subsequent transfer of control of Evans Telephone to Evans Holdings and its parent Country Road has no adverse consequences because nothing about the existing structure of Evans Telephone will change as a result of the stock acquisition. Applicants contend that the proposed transaction merely involves the transfer of corporate stock without any changes to the operations, rates, tariffs, or other regulatory circumstances of Evans Telephone.

In their initial application, and two subsequent amendments, Applicants did not meet their burden of proof that the proposed acquisition is in the public interest. The initial proposed order found that the transaction would be adverse to the public interest because the financial condition of Evans Telephone was not maintained or improved by the transaction.

In a third amendment to the application, Applicants address concerns over the financial consequences of the transaction by providing greater detail about the legal structure of the entities involved in the stock acquisition and the protections that exist to ensure Evans Telephone ratepayers will not be adversely impacted by the acquisition. Specifically, the amendment clarifies that Evans Telephone will not incur any liability for

the debt incurred by Country Road or Evans Holdings and that Evans Telephone ratepayers are insulated from the debt of Country Road and Evans Holdings. In response to concerns that the debt of the parent company might negatively impact utility ratepayers, Applicants note that Evans Telephone cannot sell any assets without Commission approval, and it cannot raise rates without Commission approval.

Of equal importance, the amendment provides greater detail on the financing of the proposed acquisition. The declaration of Mendenhall provides information on revenue and earnings assumptions through 2005 which indicate that Evans Holdings will have adequate cash flow to service its \$42 million debt obligation and to re-invest earnings into Evans Telephone, without any increase in rates for residential or business local service. The declaration also explains the separation between the Country Road's CLC operations and Evans Telephone and that the CLC will be financed independently of Evans Holdings. Country Road has not relied on revenue from a CLC operation to support debt service obligations resulting from the acquisition of Evans Telephone. The declaration of Motl provides further support that the cash flow projections for Evans Telephone will support debt repayment obligations.

Furthermore, Applicants claim that the transaction benefits the public because Country Road commits to investing approximately \$11 million in network infrastructure for Evans Telephone over the next five years. In contrast, Applicants note that Evans Telephone current ownership has decided to exit the industry, and those owners have no incentive to re-invest earnings in Evans Telephone. Applicants provide a declaration by Jane Medlin, an officer of Country Road, which states that Country Road will accelerate the offering of broadband and other services to Evans Telephone ratepayers without increasing local rates to Evans Telephone customers.

We find that the analysis and assumptions provided in the third amendment allay a significant portion of our previous concerns that the financial condition of the parent company, Country Road, could pose a threat to Evans Telephone ratepayers. We particularly note the insulation of Evans Telephone ratepayers from the debt of the parent

company, and the cash flow projections that will cover debt repayment without reliance on CLC operations. We also find the transaction will benefit Evans Telephone ratepayers if Country Road follows through with its promised \$11 million in infrastructure investment and the acceleration of new service offerings.

With this additional information provided by Applicants, we are reasonably assured that the transfer of control of Evans Telephone to Country Road and Evans Holdings is in the public interest as long as certain conditions are maintained. Specifically, we find that the transaction is in the public interest as long as Evans Telephone ratepayers are insulated from the debt repayment obligations of Country Road and Evans Holdings, and insulated from the success or failure of Country Road's CLC operations. The transaction is also in the public interest as long as Evans Telephone follows through with its commitment to infrastructure investment and new service offerings, while maintaining service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders. Therefore, to ensure that the transfer of control of Evans Telephone to Country Road is in the public interest, we shall approve the transaction subject to the following conditions:

- Evans Telephone shall not sell any assets used or useful in the provision of its regulated services to satisfy debt obligations incurred by Country Road or Evans Holdings to finance the acquisition of the Evans Telephone or Evans Communications.
- Evans Telephone shall not increase rates for its customers due to any increase in costs brought about by its acquisition by Country Road and Evans Holdings.
- Evans Telephone shall manage its finances on a stand-alone basis, independent of Country Road, CRC Communications of California, and other affiliates.
- Country Road and Evans Holdings shall provide Evans Telephone with sufficient equity capital to maintain a reasonable and balanced capital structure and to provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders.

- Evans Telephone shall comply with all existing and future affiliate rules and reporting requirements.
- Evans Telephone shall not pay a dividend, loan money, or provide any other forms of capital to Country Road, Evans Holdings, or other affiliates if doing so would jeopardize the utility's ability to provide reliable service at reasonable rates.
- Country Road shall invest approximately \$11 million in network infrastructure for Evans Telephone over the next five years and increase the offering of broadband and other services to Evans Telephone customers, over current levels, without increasing local rates.

We will not require Applicants to pay a surcredit to Evans Telephone ratepayers in the amount of \$700,000 over the next five years. As Applicants have noted, Section 854 (b) does not apply to this transaction because the utility that is a party to the proposed transaction does not have gross annual California revenues exceeding \$500 million. Therefore, we will not impose a requirement to allocate benefits from the transaction to ratepayers.

Finally, because of the unique facts and circumstances of this case, which involves sale of the privately held stock of Evans Telephone and Evans Communications, we will not impose any conditions on this transaction with regard to gain on sale. In transactions involving the transfer of control of a utility under Section 854(a), the Commission has not recently allocated proceeds from the sale of stock between ratepayers and shareholders. We will not alter this practice here. Nevertheless, we note that this decision is based on the circumstances of this case and should not be considered a precedent for future transactions.

The Commission may wish to reconsider gain on sale issues for future transactions of this sort. Some might argue that requiring sellers to share any gains from the sale of privately held stock might have the effect of dampening equity investments in small and rural local exchange carriers in California. They may also argue that past Commission decisions have established an unalterable precedent. On the other hand, cost-of-service

regulated companies are not necessarily subject to the same investment risks as unregulated companies. When shareholders have been insulated from the expense and risk associated with property ownership, and ratepayers have borne substantial costs and risk, it may be fair and reasonable for ratepayers to share in gains from the sale of utility assets. It is not clear whether previous decisions considered this viewpoint. Given these considerations, the Commission may wish to re-examine its policy on allocation of gains from future transfers of control.

## **8. Environmental Review**

Applicants contend this application does not constitute a “project” under the California Environmental Quality Act (CEQA) since Applicants are not requesting authorization related to facilities construction or other activity that would constitute a direct or indirect physical change in the environment.

Under the CEQA, we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Public Resources Code § 21080). While transfers of utility assets are generally projects subject to CEQA review by the Commission, the facts of this case indicate that this sale, while a project, is not subject to CEQA. Based upon the record, this transaction does not have the potential for causing a significant effect on the environment, and accordingly, the Commission need not perform further CEQA review. (CEQA Guideline 15061(b)(3).)

We note that any approval granted herein under Section 854 for the acquisition of the stock of Evans Telephone does not authorize Applicants to construct facilities. In addition, applicants must follow all applicable environmental regulations should they wish to construct any facilities.

## **9. Categorization**

In Resolution ALJ 176-3048, dated October 5, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is

not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3048.

#### **10. Section 311(g)(2) – Reduced Comment Period**

The Commission mailed the draft decision of the ALJ in this matter to the parties in accordance with Section 311(g)(1) and Rule 77.7. Pursuant to Pub. Util. Code § 311(g)(2), parties have stipulated to reduce the otherwise applicable 30-day period for public review and comment to seven days. Applicants filed comments on June 21, 2001, accepting the conditions and urging the Commission to adopt the draft decision. There were no changes to the draft decision as a result of comments.

#### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of September 27, 2000.
2. No protests have been filed.
3. Applicants seek approval pursuant to Pub. Util. Code § 854(a) for the acquisition of the stock of Evans Telephone by Evans Holdings and the transfer of control of Evans Telephone to Evans Holdings and Country Road.
4. Evans Telephone is an incumbent local exchange telephone utility serving approximately 12,000 access lines in portions of Merced, Stanislaus, Santa Clara, and Yolo Counties.
5. Evans Holdings and its parent company Country Road are Delaware corporations that own and operate two small local exchange companies in Maine and West Virginia.
6. After the proposed acquisition, Country Road, Evans Holdings, and Evans Telephone will be separate corporations.
7. Evans Holdings will enter into a loan transaction with CoBank for \$42 million to finance the acquisition. Evans Telephone is not responsible for this loan.
8. Because of the separate legal structures of Country Road and its subsidiaries, Evans Telephone will not incur any liability for the debt incurred to finance the

transaction and Evans Telephone ratepayers are insulated from any debt obligation from the transaction.

9. CRC Communications of California, Inc. will be financed independently of Evans Holdings and Evans Telephone.

10. Country Road will not rely on revenue from CRC to support debt service obligations resulting from the acquisition of Evans Telephone.

11. Evans Telephone must report all significant transactions with unregulated affiliates according to Section 587 and the rules set forth in D.93-02-019.

12. The transaction will benefit the public interest if Applicants invest \$11 million in network infrastructure and increase the offering of broadband and other services to Evans Telephone customers without increasing local rates.

### **Conclusions of Law**

1. The proposed stock acquisition and transfer of control of Evans Telephone to Evans Holdings and Country Road is in the public interest as long as Evans Telephone ratepayers are insulated from the debt repayment obligations of Country Road and Evans Holdings, and insulated from the success or failure of Country Road's CLC operation, CRC.

2. To ensure the proposed transaction is in the public interest, the Commission should approve this application subject to the conditions set forth in Appendix A of this order.

3. The proposed transaction does not have the potential for causing a significant effect upon the environment. Applicants must follow all applicable environmental regulations and Commission rules for construction of any facilities.

4. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

**O R D E R**

**IT IS ORDERED** that:

1. Application (A.) 00-09-045 is approved subject to the conditions set forth in Appendix A of this order.
2. Applicants are not granted any authorization by this order to construct facilities and shall follow all applicable environmental regulations and Commission rules should they wish to construct facilities.

3. A.00-09-045 is closed.

This order is effective today.

Dated June 28, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

I will file a partial dissent.

/s/ HENRY M. DUQUE  
Commissioner

**APPENDIX A**  
**ADOPTED CONDITIONS**

The authority granted by this decision is contingent upon the following conditions:

1. Evans Telephone shall not sell any assets used or useful in the provision of its regulated services to satisfy debt obligations incurred by Country Road or Evans Holdings to finance the acquisition of the Evans Telephone or Evans Communications.
2. Evans Telephone shall not increase rates for its customers due to any increase in costs brought about by its acquisition by Country Road and Evans Holdings.
3. Evans Telephone shall manage its finances on a stand-alone basis, independent of Country Road, CRC Communications of California, and other affiliates.
4. Country Road and Evans Holdings shall provide Evans Telephone with sufficient equity capital to maintain a reasonable and balanced capital structure and to provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders.
5. Evans Telephone shall comply with all existing and future affiliate rules and reporting requirements.
6. Evans Telephone shall not pay a dividend, loan money, or provide any other forms of capital to Country Road, Evans Holdings, or other affiliates if doing so would jeopardize the utility's ability to provide reliable service at reasonable rates.
7. Country Road shall invest approximately \$11 million in network infrastructure for Evans Telephone over the next five years and increase the offering of broadband and other services to Evans Telephone customers, over current levels, without increasing local rates.

**(END OF APPENDIX A)**

A.00-09-045

D.01-06-084

Commissioner Henry M. Duque, dissenting:

As I reflected in my dissenting remarks in D.01-06-007, I find this decision similarly flawed in imposing unnecessary conditions for payment of dividends. Dividend payment is a decision management makes balancing numerous operational as well as financial factors, including service quality, growth, and incentives to attract investment. An artificially imposed requirement that directly ties dividend payment with a single issue of service quality overlooks other important consideration introduces uncertainty and would discourage investment. It also sends the wrong signal that this Commission can willy-nilly impose requirements on regulated companies without limit and without sufficient basis.

The decision adopted today conveys a message that dividend payment is a short-term zero sum game where either customers or shareholders must lose for the other to gain. It overstates the importance of a sole issue over all others. I find the approach adopted in the majority decision contrary to the reality of today's telecommunications market.

For these reasons I will respectfully dissent in part.

**/s/ HENRY M. DUQUE**

Henry M. Duque  
Commissioner

June 28, 2001

San Francisco, California